PATENT

Atty Docket No.: 1000457-1
App. Ser. No.: 09/734,996

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1, 13, 16, and 29 have been amended. Support for the amendments may be found page 10, lines 11-20 of the originally filed specification. Therefore, claims 1-30 and 32-37 are currently pending, of which claims 1, 13, 16, and 29 are independent.

No new matter has been introduced by way of the claim amendments; entry thereof is therefore respectfully requested.

Claims 1-11, 13-18, 23-30 and 32-37 were rejected under U.S.C. §103(a) as being unpatentable over Flavin (6,005,603) ("Flavin") in view of Reynolds et al (2001/0037500) ("Reynolds").

Claim 12 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Reynolds in further view of SMPTE 309M-1999 ("SMPTE").

Claims 19-22 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Reynolds, and in further view of Sequeira (2001/0000194) ("Sequeira").

Examiner Interview Previously Conducted

An interview was conducted with Examiner Hoye on June 29, 2007. The Applicant attempted to conduct a second interview in response to the current rejection issued on July 23, 2007. However, Examiner Hoye has left the Office and the case has not been redocketed to another Examiner. Therefore, a brief summary of the June 29, 2007 interview is provided below.

During the interview, the amendment submitted in the Applicant's previous response was discussed. Examiner Hoye seemed to agree that the prior art of record, including Reynolds, failed to teach the features included in the amendment. Specifically, Examiner Hoye indicated that Flavin and Reynolds did not teach or suggest the claimed private cue. However, the current rejection erroneously states that Reynolds does disclose a private cue. The Applicant respectfully submits that this position is incorrect for at least the reasons stated below.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-11, 13-18, 23-30 and 32-37 were rejected under U.S.C. §103(a) as being unpatentable over Flavin in view of Reynolds. This rejection is respectfully traversed

because neither Flavin or Reynolds, taken alone or in combination, teach or suggest the features of independent claims 1, 13, 16, and 29.

Independent claims 1, 13, 16, and 29 have been amended herein to recite that the private cue cannot be interpreted by a third party other than the specific affiliates. As such, third parties lack the ability to access and read the data contained in the private cues.

The Office Action erroneously states that Reynolds discloses a private cue in paragraphs 33-39. More specifically, the Office Action states that the priority levels and unique IDs assigned to the meta data of Reynolds are equivalent to the claimed cues. However, the interpretation of Reynolds made in the Office Action is incorrect.

In the paragraphs cited in the Office Action, Reynolds discusses determining when to substitute media content. Reynolds provides three different methods to signal to network affiliates that media content should be substituted. The three methods are: 1) assigning priority levels, 2) assigning geographic regions, and 3) assigning an ID. For example, if a certain ID is assigned to new substitutable media content, then a local network affiliate can compare the ID assigned to the new substitutable media content to a local look-up table of IDs to determine if the local network affiliate should make the substitution. The priority levels and geographic region codes work in essentially the same way as the IDs. As such, the three methods to substitute media content disclosed by Reynolds only tell a local network affiliate when they should make a substitution. Reynolds does not teach or suggest that the three methods prevent a third party from "interpreting" the new substitutable media content. That is, any third party using the system of Reynolds could presumably access and read the new substitutable media content. The three methods disclosed by Reynolds only inform the third party that the new substitutable media content should not be used because it is not meant

for broadcast in their locality. The three methods disclosed by Reynolds are merely ways to identify the content that local network affiliates should and should not broadcast. There is no suggestion in Reynolds that the three methods could prevent a third party from interpreting the new substitutable media content.

In fact, it would be deleterious to the system of Reynolds if the three methods prevented third parties from interpreting the new substitutable media content, because it would prevent a third party from independently determining that the new substitutable media content should not be substituted. That is, a local network affiliate may access and read or view the new substitutable media content to ensure that the new substitutable media content is not meant to be broadcast in their locality. For example, the new substitutable media content may clearly be intended for a different city. This could be easily determined by viewing the new substitutable media content. This independent determination can only be made if the third party can access the new substitutable media content.

Therefore, Flavin and Reynolds fail to teach or suggest at least the features recited above. Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

Claim 12

Claim 12 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view Reynolds in further view of SMPTE. This rejection is respectfully traversed because neither Flavin, Reynolds, nor SMPTE, taken alone or in combination, teach or suggest the features of independent claim 1, as set forth above. SMPTE fails to cure the

deficiencies of Flavin and Reynolds. Therefore, claim 12 is allowable at least by virtue of its dependence on allowable claim 1, for the reasons set forth above.

Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

Claims 19-22

Claims 19-22 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view Reynolds in further view of Sequeira. This rejection is respectfully traversed because neither Flavin, Reynolds, nor Sequeira, taken alone or in combination, teach or suggest the features of independent claim 16, as set forth above. Sequeira fails to cure the deficiencies of Flavin and Reynolds. Therefore, claims 19-22 are allowable at least by virtue of their dependence on allowable claim 16, for the reasons set forth above.

Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: October 25, 2007

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